

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 08 NOV 2004

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23 MAY 2005

Applicant's or agent's file reference 20970WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/NL 03/00842	International filing date (day/month/year) 28.11.2003	Priority date (day/month/year) 29.11.2002
International Patent Classification (IPC) or both national classification and IPC A61F2/44		
Applicant DSM IP ASSETS B.V. et al		



1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
These annexes consist of a total of sheets.

EPO - DG 1

10. 12. 2004

3. This report contains indications relating to the following items:

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application

Date of submission of the demand 21.06.2004	Date of completion of this report 02.11.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office - Gitschiner Str. 103 D-10958 Berlin Tel. +49 30 25901 - 0 Fax: +49 30 25901 - 840	Authorized Officer Stach, R Telephone No. +49 30 25901-551 

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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/NL 03/00842

I. Basis of the report

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-6 as originally filed

Claims, Numbers

1-9 as originally filed

Drawings, Sheets

1-2 as originally filed

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-9
	No: Claims	
Inventive step (IS)	Yes: Claims	1-9
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Reference is made to the following document/s/:

D1: EP-A-0 346 129 (UNIV NEW JERSEY MED ;UNIV RUTGERS (US); JOHNSON &
JOHNSON ORTHOPAE) 13 December 1989 (1989-12-13)

1. The document D1 is regarded as being the closest prior art to the subject-matter of claim 1, and discloses (the references in parentheses applying to this document) (see figure 1 and claim 1):

An artificial intervertebral disc, comprising a nucleus (2) of flexible material with the shape of a flattened body, with a lower and an upper side connected by a lateral surface, around which partial windings of traction-resistant fibres have been applied.

The subject-matter of claim 1 differs from this known disc in that the fibres around the nucleus are applied in at least substantially (mainly) radially oriented windings.

The subject-matter of claim 1 is therefore new (Article 33(2) PCT).

The problem to be solved by the present invention may be regarded as to permit some shape variations of the nucleus in the longitudinal direction of the vertebral column, but not or only hardly in the direction perpendicular thereto.

The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step (Article 33(3) PCT) for the following reasons:

The solution is not obvious and none of the documents cited in the search report hints to such a solution.

2. Claims 2-9 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

**INTERNATIONAL PRELIMINARY
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Upon entry of the regional phase the following should be noted:

- The features of the claims should be provided with reference signs placed in parenthesis.
- Prior art documents known to the applicant should identified in the description and relevant background art disclosed therein should be briefly discussed.
- Claim 1 should be drafted in the two-part form.